IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9449 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

HASMUKHBHAI RAVJIBHAI AAHIR

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 9449 of 2004

MR DEVANG T SHAH for Petitioner No. 1-2/3

Mr.R.M.Chauhan, AGP for Respondent No. 1-3,

MR SP MAJMUDAR for Respondent No. 4

MR NAVIN N CHAUHAN for Respondent No. 4

MR.R.N.Shah for Respondent No. 5-8

CORAM : HON'BLE MR.JUSTICE JAYANT PATEL

Date of decision: 26/08/2004

ORAL JUDGEMENT

Leave to delete the respondent No.9. Leave to delete the word "except" at para (c) on page 16 of the petition for conveying the meaning that the probate as sought by the respondent 4 should be granted for the property which the subject matter of document of exchange dated 31.3.1999.

2. Rule. Mr.Chauhan, Ld.AGP waives service of rule on behalf of respondent Nos 1,2 & 3 and Mr.R.N.Shah appears and waives service of rule on behalf of respondent Nos 5 to 8. With the consent of learned counsel for parties matter is taken up for final hearing today.

3. Heard learned advocates appearing both sides.

4. This court, today, in the proceedings of SCA No.10192/04 has simultaneously passed the order qua the rights of the petitioner therein who is respondent No.4. As per the reasons recorded in the said order, the same situation will prevail qua orders relating to cancellation of entry, save and except final orders in this petition. So far as the petitioners herein are concerned, there are additional facts of the rights created in one of the properties under will, and therefore, qua the petitioners herein, matter is required to be considered separately.

5. As per the settled legal position, the revenue entries are having value for fiscal purposes and the same can not be read as creating any right in the property in question nor can it be read as divesting right in the property which otherwise was in existence. If a mandatory procedure is not followed, the authority exercising jurisdiction under Bombay Land Revenue Code (hereinafter referred to as "the Code") would be within their jurisdiction to cancel the entry, but such cancellation also would not affect the rights of the parties which are otherwise available in accordance with law. There is no dispute on the point that after the entry in question, the exchange deed has been executed between the respondent No.4 and petitioner No.1 and deceased Ravjibhai and the same is by way of registered deed. As per the said exchange deed in exchange to the property bearing S.No.461(old) 260(new) admeasuring 2 acre 33 gunthas the petitioner No.1 and deceased Ravjibhai have transferred and parted with the property bearing S.No.359(old) 228(new) admeasuring 2 acre 26 guntahs and property bearing S.No.360(old) 227/2(new) admeasuring 0 acre 07 gunthas. It is the case of the

petitioners that the property which has been given in exchange to the original property held by deceased Ramjibhai is still in possession of the respondent No.4 herein. It is the further case of the petitioners that based on the said exchange deed, not only the revenue entry is mutated for the purpose for the said registered exchange deed but thereafter the said property is amalgamated with the other properties of the petitioners and a Drive-in cinema is started over the said property and the petitioner is enjoying the property. Further, in the proceedings of appeal before the Collector, it appears that the petitioners were not impleaded as party. Even in the revision application which was preferred by the respondent No.4 before the State Govt, the petitioners were not impleaded as party, but the petitioners moved the application for being impleaded as party and the Special Secretary while dismissing the revision has incidentally made observations regarding the exchange deed also.

6. The registered sale deed can not be set at naught by the revenue authority exercising the power under the Code. Therefore, while hearing the revision application together with the application preferred by the petitioners herein the State Government has exceeded the jurisdiction in making observations qua the rights of the petitioners based on the exchange deed. If the respondent Nos 5,6 & 7 who were appellants before the Dy.Collector and who initiated proceedings against the entry based on the socalled will of deceased Ramjibhai are aggrieved by the action of the respondent No.4 of executing the exchange deed or if as per respondent Nos 5,6 & 7 the exchange deed is a nullity or otherwise, it would be for the respondent Nos 5,6 & 7 to resort to appropriate proceedings before the civil court for such purpose. However, while exercising revisional jurisdiction under the Code the State Govt could not have observed qua the exchange deed which created third party rights through registered sale deed in favour of the petitioners.

7. Under the above circumstances,the observations made by the State Govt qua the land in question which is acquired by the petitioners herein under the registered exchange deed are beyond the jurisdiction and the same deserve to be quashed and set aside with clarification that it would be open to respondent Nos 4,5 & 6 to resort to appropriate civil proceedings before the competent court for setting aside the exchange deed or for other reliefs in accordance with law. So far as the order passed by the State Govt qua the rights of respondent Nos

4 to 8 based on the revenue entry of the socalled will which is cancelled, the separate order is simultaneously passed by this court in SCA No.10192/04 and the same should operate the field.

8. Under the above circumstances, the petition is partly allowed to the aforesaid extent. Rule is made partly made absolute accordingly. In the facts and circumstances there shall be no costs.

24.8.04 (JAYANT PATEL,J)